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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/503,401	02/14/2000	Ramin Rezaiifar	QCPA451DIV2	6558

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EXAMINER
PHILPOTT, JUSTIN M

ART UNIT	PAPER NUMBER
2616	

DATE MAILED: 07/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

	Application No.	Applicant(s)
Office Action Summary	09/503,401	REZAIIFAR ET AL.
	Examiner	Art Unit	
	Justin M. Philpott	2616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *10 May 2006*.

2a)☒ This action is **FINAL**.   2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-3* is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-3* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All   b)☐ Some * c)☐ None of:

    1.☐ Certified copies of the priority documents have been received.

    2.☐ Certified copies of the priority documents have been received in Application No. _____.

    3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☐ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
    Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____ .

5)☐ Notice of Informal Patent Application (PTO-152)

6)☐ Other: _____.

DETAILED ACTION

Response to Arguments

1.   Applicant's arguments filed May 10, 2006 have been fully considered but they are not

persuasive.

2.   Specifically, applicant argues (pages 4-5) that it would not be obvious to combine the

teachings of Honkasalo and AAPA because applicant alleges that the references "teach away"

from the combination because Honkasolo does not teach a single channel is used while AAPA

does in fact teach a single channel is used. However, this argument is not persuasive for the

following reason.

3.   First, it is undisputed that Honkasolo teaches an invention comprising transmission of

data in CDMA (e.g., see title of the Honkasolo patent, stating "transmission for high speed data

services in CDMA").

4.   Further, it is also undisputed that CDMA is incorporated in the IS-95 standard well

known in the art (e.g., see Oldenwalder USP 5,930,230 at col. 1, lines 33-37 regarding "[t]he IS-

95 standard incorporates code division multiple access (CDMA) signal modulation techniques").

5.   Finally, it is also undisputed that "[i]n accordance with the IS-95 standard each subscriber

unit [] transmits user data via a single channel" (see Oldenwalder at col. 2, lines 1-2). Applicant

also admits this fact (see specification, page 2, lines 1-2).

6.   Thus, a CDMA system is well known in the art to utilize a single channel, and since

Honkasolo teaches a CDMA system it would have been obvious to use a single channel since

such an implementation has clearly been utilized in the art as the conventional method for

transmitting using CDMA. Reasons for motivation to combine this well known CDMA teaching

in the art to the CDMA transmission of Honkasolo include the fact that it is well known in the art

that applying a well known standard, or protocol, to a system provides the system with

significantly improved industrial applicability. Thus, at the time of the invention it would have

been obvious to one of ordinary skill in the art to transmit data in a single channel in the

invention of Honkasolo since such transmission is well known in the art in order to comply with

the IS-95 standard (which requires each subscriber transmit user data via a single channel, as

discussed in Oldenwalder cited above), and since it is well known in the art that applying a well

known standard, or protocol, to a system provides the system with significantly improved

industrial applicability. Accordingly, applicant's argument is not persuasive.

Claim Rejections - 35 USC § 103

7.   Claims 1-3 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent

No. 6,137,789 to Honkasalo in view of applicant's admitted prior art (AAPA).

Regarding claim 1, Honkasalo discloses a mobile station for requesting multiple code

channels for high speed data transmission. The mobile station requests a number of parallel code

channels and a base station signals an assigned number of channels for a given period of time

(col. 5, lines 58-67). Honkasalo shows data rates dependent on the number Supplemental Code

Channels in Table 1 (col. 7, lines 1-12). The data rate of transmission is implicitly stated in the

number of channels assigned to the mobile station by the base station. The assignment of a data

rate is necessarily transmitted to the mobile station prior to and independent of data transmission.

The base station must first transmit the assignment of channels before a mobile station can

transmit data on those channels. Thus, the signaling of assigned channels and given period of

time by the base station meets the limitations of transmitting a message indicative of the rate of

said data prior to and independent of data transmission and the time interval over which data

transmission will be transmitted.

However, Honkasalo may not specifically disclose that data is transmitted using one data

transmission channel.

Applicant's specification specifically discloses that applicant's invention is in accordance

with the well known prior art teachings of the IS-95 standard (e.g., see specification, page 1, line

34). Further, AAPA discloses that, according to the IS-95 standard, data comprising both traffic

data and voice data is partitioned into frames in a traffic channel (e.g., see specification, page 2,

lines 3-5). Further, in addition to AAPA, Examiner takes official notice that in accordance with

the IS-95 standard data is transmitted using one data transmission channel. Still further, in

addition to and in support of Examiner's official notice, the previously cited art of Odenwalder et

al. (USP 5,930,230) clearly admits exactly this in its assessment of the well known prior art: "In

accordance with the IS-95 standard each subscriber unit 10 transmits user data via a single

channel" (col. 2, lines 1-2). Additionally, it is noted that the above passage in Odenwalder is

disclosed in background information of an invention (i.e., it is well known prior art). Thus, the

above passage is not a novel aspect of the invention of Odenwalder, having the same assignee of

applicant's instant application, and even if Odenwalder comprised the same inventive entity of

the instant application (which it does not), the passage is at best admitted prior art. Accordingly,

both AAPA and well known prior art clearly disclose that one of ordinary skill in the art would

transmit data using one data transmission channel if transmission is to be in accordance with the

well known standard of IS-95. Furthermore, it is well known in the art that applying a well

known standard, or protocol, to a system provides the system with significantly improved

industrial applicability. Thus, at the time of the invention it would have been obvious to one of

ordinary skill in the art to transmit data in a single channel in the invention of Honkasalo since

such transmission is well known in the art in order to comply with the well known IS-95

standard, and since it is well known in the art that applying a well known standard, or protocol,

to a system provides the system with significantly improved industrial applicability.

Regarding claim 2, the frame type is inherent in the signaling of assigned code channels.

Honkasalo discloses that supplemental code channels may be used by the mobile station to

transmit high speed data (col. 5, lines 58-67). Thus, in response to a mobile station request, the

signaling from thebase station indicates the number of assigned supplemental code channels,

whereby supplemental channel is the frame type.

Regarding claim 3, Honkasalo discloses signaling a data transmission rate, time interval

and frame type from a base station to a mobile station (col. 5, lines 58-67,. see also Table 1).

Honkasalo fails to expressly disclose that the frame type is indicated by two bits and that the data

transmission rate and time interval are both indicated by four bits. However, it is generally

considered to be within the ordinary skill in the art to adjust, vary, select or optimize the

numerical parameters or values of any system absent a showing of criticality in a particular

recited value. The burden of showing criticality is on Applicant. In re Mason, 87 F.2d 370, 32

USPQ 242 (CCPA 1937), Marconi Wireless Telegraph Co. v. U.S., 320 U.S. 1, 57 USPQ 471

(1943), In re Schneider, 148 F.2d 108, 65 USPQ 129 (CCPA 1945), In re Aller, 220 F.2d 454,

105 USPQ 233 (CCPA 1955), In re Saether, 492 F.2d 849, 18 1 USPQ 36 (CCPA 1 974),. In re

Antonie, 559 F.2d 618, 195 USPQ 6 (CCPA 1977), In re Boesch, 617 F.2d 272, 205 USPQ 215

(CCPA 1 980). At the time the invention was made it would have been obvious to a person of

ordinary skill in the art to use as many bits as necessary to indicate the frame type, data rate and

time interval in the invention of Honkasalo. One of ordinary skill in the art would have been

motivated to do this because the number of bits needed to indicate these values may be greater or

less than the specified number depending on the system implementation. For example,

Honkasalo indicates that the data rate is specified by the number of supplemental channels that

are assigned. If a maximum of eight channels may be assigned, then only three bits are

necessary to indicate the data rate. Thus, at the time the invention was made it would have been

obvious to a person of ordinary skill in the art to use as many bits as necessary to indicate the

frame type, data rate and time interval in the invention of Honkasalo since it is generally

considered to be within the ordinary skill in the art to adjust, vary, select or optimize the

numerical parameters or values of any system absent a showing of criticality in a particular

recited value.

Conclusion

8.   **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time

policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE

MONTHS from the mailing date of this action. In the event a first reply is filed within TWO

MONTHS of the mailing date of this final action and the advisory action is not mailed until after

the end of the THREE-MONTH shortened statutory period, then the shortened statutory period

will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

however, will the statutory period for reply expire later than SIX MONTHS from the mailing

date of this final action.

9.   Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Justin M. Philpott whose telephone number is 571.272.3162. The

examiner can normally be reached on M-F, 9:00am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Chi Pham can be reached on 571.272.3179. The fax phone number for the

organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent

Application Information Retrieval (PAIR) system. Status information for published applications

may be obtained from either Private PAIR or Public PAIR. Status information for unpublished

applications is available through Private PAIR only. For more information about the PAIR

system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR

system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would

like assistance from a USPTO Customer Service Representative or access to the automated

information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Justin M. Philpott

CHI PHAM
SUPERVISORY PATENT EXAMINER 7/7/07